

## **SECTION 107 LEGAL RELATIONS AND RESPONSIBILITIES TO THE PUBLIC**

**107.01 LAWS, RULES AND REGULATIONS TO BE OBSERVED.** Observe and comply with all of the following:

- A.** Federal and State laws and regulations;
- B.** Local laws and ordinances; and
- C.** Regulations, orders and decrees of bodies or Tribal ordinances having any jurisdiction or authority.

Protect and indemnify the Department and its representatives against any claim or liability arising from the violation of any of the above-listed items, whether violated by the Contractor, a subcontractor, materialman, or supplier, or any of their employees or agents.

Follow all rules and regulations of Federal, State, and local health officials. Do not require an employee of the Contractor or subcontractor (s) to work in surroundings, or under conditions that are unsanitary, hazardous or dangerous to health or safety. Admit any inspector of the OSHA or other legally responsible agency involved in safety and health administration without delay and without presentation of an inspection warrant to all areas of the work and project site upon presentation of proper credentials.

Follow Federal, State and local laws, rules and regulations regarding unlawful employment practices including race, religion, color, sex or national origin discrimination, and that define actions required for Affirmative Action and Disadvantaged Business programs.

Work within a State or National Forest is under the regulations of the authority having jurisdiction governing the forest.

Immediately notify the Engineer in writing if any discrepancy or inconsistency is discovered between the Contract and any law, ordinance, regulation, order or decree.

**107.02 PERMITS, LICENSES, AND TAXES.** Obtain all legally required permits and licenses, pay all charges, fees, and taxes, and give all notices necessary and incidental to the lawful prosecution of the work.

**107.03 PATENTED DEVICES, MATERIALS, AND PROCESSES.** Do not use any design, device, material, or process covered by letters of patent or copyright, without a legal agreement with the patentee or owner. Indemnify and save harmless the Department, any affected third party, or political subdivision from all claims for infringement for the use of any patented design, device, material or process, or trademark or copyright. Indemnify the Department of all costs, expenses, and damages obligated for payment by reason of an infringement during the prosecution or after the completion of the project.

**107.04 RESTORING SURFACES OPENED BY PERMIT.** The Department may grant permits to construct or re-construct a utility facility in the highway or street for authorities of the municipality in which the work is done. Do not allow any individual,

firm, or corporation to make an opening in the street without a Department permit. Do not allow any person or persons to make an opening unless authorized by the Engineer. Parties bearing permits may make openings in the street. When requested by the Engineer, repair these openings. The work will be paid for under Subsection 104.03 or as provided in the Contract. Repair to the same standards as the original work.

**107.05 FEDERAL AID PARTICIPATION.** Federal laws, rules, or regulations in conflict with any provisions of a federally assisted Contract prevail and take precedence over conflicting Contract provisions.

Federally assisted work is under Department supervision and subject to inspection and approval of the United States Government. Inspections by authorized Federal representatives do not make the United States a party to the Contract and will not interfere with the rights of the Contract parties.

**107.06 PUBLIC CONVENIENCE AND SAFETY.** Conduct construction with minimum obstruction to traffic. Provide safety and convenience to the public and protect persons and property including, but not limited to, items specified in Subsection 104.05 and Section 618.

Do not close public roads without the Engineer's permission.

**107.07 RAILWAY-HIGHWAY PROVISIONS.** Responsibility for work involving railway property are:

**A. Contractor.** Perform work on railroad right-of-way without interfering with the movements of trains or traffic on railway property. Do not cross the railway right of way or tracks except at temporary or existing, open public grade crossings.

Furnish signed copies of the "Contractor Requirements and Acknowledgment for Working on Railroad Right of Way" found in the Contract to the railroad and Project Manager before entering railroad property and starting work.

Provide advance notice, as agreed to between the Contractor and railway officials, before working on railway property, hauling across railway tracks, or blasting within 1000 feet (305 m) of railway property.

Comply with Subsections 107.09 and 107.18 when blasting or performing other work on or near railway property.

Furnish insurance for all work performed as required by Subsection 107.13 or the Contract. Make arrangements with the railway company for railway crossings not specified in the Contract at Contractor expense.

Reimburse the railroad company for all costs of railway flagging, other protective services, and installation of temporary crossings for haul roads for contractor-furnished material sources based on billings submitted by the railway company.

**B. Department.** The Department will:

1. Enter into an agreement with the Contractor and the railway company when required by the railway company;
2. Arrange for railway crossings specified in the Contract and pay for the crossings, railway flagging and other protective services necessary for

- work performed on or near railroad right of way, including haul road track crossings to Department-optioned or owned material sources;
3. Forward billings for flagging, track crossings, and other protective service billings for contractor-requested crossings, submitted to the Department by the railway company.
- C. Railway.** Railway companies will:
1. Furnish all flagging or other protective service as necessary for the safe operation of trains or traffic on railway property;
  2. Construct, maintain, protect, and remove temporary crossings and submit billings for flagging or other protective services to the Contractor or Department.

**107.08 LOAD RESTRICTIONS.** Do not exceed legal load restrictions when hauling material and equipment on public roadways and bridges within and beyond the project limits and on all new and existing portland cement concrete roadways, treated base courses, bituminous surfacing lifts and courses, including plant mix base, plant mix surfacing, and open-graded friction course.

Do not place loads on a concrete pavement, treated base, or structure before the curing period has been achieved.

Repair damaged roadways and structures resulting from construction operations at Contractor expense.

Measure and analyze truck legal load limits by the bridge formula before hauling any material over existing or newly-paved roadways and bridges. Furnish a drawing showing distances between axles, truck tare weight, and the overall length of each truck.

Show a minimum of two applications using the bridge formula on the drawing. Include on the first application the overall length between axles. For the second application, do not consider the steering axle, and add the value obtained from the bridge formula to the anticipated load on the steering axle. Use the lesser of the two values obtained as the legal load. Retain a copy of the appropriate drawing in each truck. Do not exceed established legal load weights for single axle and tandem axles.

The weight on a truck in excess of the maximum legal weight as determined above will be deducted from the quantity considered for payment.

Comply with this provision and all applicable laws, rules, and regulations related to operation of motor vehicles on public roads.

Trucks operated on public roads may be checked by the Department's Motor Carrier Services and fines levied for exceeding legal loads.

Do not use existing bridges, new bridges, or bridges to be removed but still in use by the public as work platforms, work bridges, or to support or move equipment without the Engineer's written approval.

Approval will be granted only where load analysis and review of traffic control, safety, and convenience show it to be in the public interest.

No additional compensation will be considered or allowed for any violation of these provisions.

**107.09 USE OF EXPLOSIVES.** Transport, store, handle, and load explosives and blasting agents following all laws and ordinances as well as the applicable

requirements of Title 29, Title 30, and Title 49 of the Code of Federal Regulations when using, handling, loading, transportation, and storing explosives and blasting agents.

Use explosives without endangering life or property and be responsible for all resulting property damages, injury, or death.

Only use persons experienced in the handling of explosives and do not fire explosives until sounding a warning and removing all persons from the radius of danger.

Notify each property owner, railway company, and public utility company having facilities near the blasting area of the intent to use explosives to enable them to take precautions to protect their property from injury. Be responsible for damages to property or injury to persons attributable to the use of explosives.

#### **107.10 PROTECTION AND RESTORATION OF PROPERTY AND LANDSCAPE.**

Preserve all public and private property when performing work. Do not disturb or damage land monuments and property markers until witnessed or referenced by the Project Manager.

Be responsible for all damage to public and private property resulting from any act, omission, neglect, or misconduct in the manner or method of executing work until the project is accepted.

Replace or restore damaged property to its original condition at Contractor expense.

#### **107.11 ENVIRONMENTAL PROTECTION.**

**107.11.1 General.** Follow all State, local, and Federal laws and regulations controlling pollution of the environment. Take precautions to prevent pollution of streams, lakes, ponds, reservoirs, and wetlands with silt, fuels, oils, bitumens, chemicals, or other harmful materials. Prevent pollution of the atmosphere from particulate and gaseous matter.

Obtain all required permits and furnish copies of all permits or authorizations to the Project Manager before starting activities requiring permits.

**107.11.2 Water Pollution and Siltation Regulations.** Attention is directed to Title 75, Chapter 5, MCA, (Water Quality) and the administrative rules of the Water Quality Bureau, Department of Health and Environmental Sciences.

Under the Water Pollution Control Act, Construction De-watering - General Discharge Permits and Short-Term Construction Authorizations are required for construction activities that may result in a violation of water quality standards of streams, lakes, or other bodies of water located on or adjacent to the project.

Under the Federal Water Pollution Control Act, as administered by the U.S. Army Corps of Engineers, Permits Branch, P.O. Box 5, Omaha NE 68101, Section 404 Permits are required for discharging dredged or fill material into wetlands or waters under the jurisdiction of the Corps. Information on Section 404 Permits may be obtained from the Corps offices in Helena (406-444-6670) and Billings (406-657-6891).

Other requirements relating to water pollution control are covered in Section 208.

- A. Construction De-watering - General Discharge Permits.** Obtain a Construction De-watering - General Discharge Permit from the Water Quality Bureau, Department of Health and Environmental Sciences in Helena before de-watering any cofferdam or other excavation. Copies of the permit are available from the Water Quality Bureau. A permit is valid for a project only when accompanied by an authorization letter. Do not start work authorized by a Construction De-watering - General Discharge Permit until the Project Manager is furnished an executed copy of the authorization letter.

The General Discharge Permit may require the treatment of wastewater by pumping the water to retention ponds for clarification or provide other approved treatment.

- B. Short-Term Construction Authorization.** Obtain all Short-Term Construction Authorizations, under ARM 16-20.633(3a), for all operations involving activities or improvements that would violate the Montana Water Quality Standards.

Forms for "Application For Authorization" for short-term construction activities may be obtained from the Water Quality Bureau, Department of Health and Environmental Sciences in Helena.

Applications for Authorization require furnishing the following information:

1. A detailed description of all construction activities that may result in stream sedimentation or turbidity (e.g., riprap work, instream work with equipment, dredging, channeling, excavating);
  2. A list of the type of equipment planned for use to accomplish the work described in (1) above and a discussion of how the equipment will be used in conjunction with the project;
  3. The date construction activity is anticipated to commence;
  4. The estimated completion date;
  5. A discussion of the alternatives considered or available for minimizing or eliminating stream sedimentation as a result of construction activity;
  6. A location map; plan and elevation drawings showing the temporary facilities relationship to the stream channel. Include photographs if possible.
- C. Section 404 - Nationwide and Individual Permits.** Attention is directed to the Federal Water Pollution Control Act. Follow the provisions of this act, with special attention directed to Section 404.
- Construction activities in and around wetlands or waterways may be covered by a U.S. Army Corps of Engineers Nationwide Permit or may require an individual Section 404 Permit. Obtain all permits necessary for activities relating to the construction that are not covered by a Section 404 Permit already obtained by the Department. These activities may include, but are not limited to, temporary fills and berms, haul roads, work bridges, and the like, which require fill below the ordinary high-water limits of streams, wetlands, lakes, or other water bodies under the jurisdiction of the Corps.
- The Contract will include any additional conditions and requirements for applicable Section 404 permits.

**107.11.3 Air Quality.** Operate all equipment including, but not limited to, hot-mix paving plants and aggregate crushers to meet the minimum air quality standards established by Federal, State, and local agencies.

No additional payment will be made for the use or installation of dust or smoke control devices, for the disruption of work or loss of time occasioned by the installation of such control devices, or for any other related reasons.

**107.11.4 Noise Pollution.** Follow all applicable laws and regulations and all requirements contained in the Contract regarding noise pollution.

The Contract may include additional requirements for projects located in or near urban areas.

**107.11.5 Noxious Weed Management.** Follow the requirements of the County Noxious Weed Management Act, Title 7, Chapter 22, Part 21, and all county and contract noxious weed control requirements. Determine the specific noxious weed control requirements not specified in the Contract of each county where the project is located before submitting a bid.

All costs incurred to meet the weed control requirements are incidental to other items of the Contract.

**107.11.6 VACANT.**

**107.12 FOREST PROTECTION.** Observe sanitary laws and regulations regarding the performance of the work within or adjacent to State or National Forests and Parks. Keep all areas in an neat condition, dispose of all refuse, and obtain permits for the construction and maintenance of construction camps, stores, warehouses, residences, latrines, cesspools, septic tanks, and other structures.

The Contractor, subcontractors, and their employees shall prevent, suppress, and assist in preventing and suppressing forest fires, and immediately notify a forest official of the location and extent of any fire discovered.

Maintain spark arresters to meet the Forest Supervisor's requirements on all steam, gas, or diesel-driven machinery used and on all flues at construction camps.

**107.13 INSURANCE REQUIREMENTS.**

**107.13.1 Insurance On All Contracts.** Obtain commercial general liability insurance with a general aggregate limit of \$2,000,000; an occurrence limit of \$1,000,000; and products and completed operations limit of \$1,000,000.

Obtain a policy that:

- A. Provides coverage on an occurrence basis and not on a claims made basis;
- B. Provides the owners and contractor protective coverage with the same limits as the commercial general liability insurance, with the State of Montana, its agents, employees, and officers as an additional named insured;
- C. Does not contain exclusions for explosion, collapse, and underground damage hazards.

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Do not start work until the Department has been furnished evidence that adequate insurance has been obtained.

**107.13.2 Insurance Involving Railroads.** Furnish Railroad Protective Liability Insurance on behalf of the railroad when equipment or personnel are located or work is done on any railroad right of way.

The limits of liability are specified in the Contract.

Obtain public liability and property damage insurance as specified in Subsection 107.13.1 before working within 50 feet (15.25 m) from the nearest rail but still on railroad property.

Submit copies of the Railroad Protective Liability Insurance policy, and a certificate of insurance required in Subsection 107.13.1 to the Engineer for transmittal to and approval by the railroad. Do not use or enter railroad property until railroad approval is received and the policies are in effect. This applies to all work done as a part of the project.

**107.13.3 Insurance On Contracts Involving Utility Property and Services.** See Subsection 107.18 for additional insurance required on contracts involving utility property and services.

**107.13.4 General.** Furnish insurance policies with an endorsement that prohibits canceling, altering, amending or reducing coverage without giving a minimum of 30 calendar days written notice by the insurance company to the insured and the Department. Keep the required insurance in full force and effect until all work has been satisfactorily completed and accepted under the terms of the Contract. All insurance policies issued under the Contract must be countersigned by a Montana resident agent. If the state where the insurance is being purchased has a reciprocal agreement with the State of Montana and the insurance company is licensed to do business in the State of Montana, a countersignature by a Montana Resident Agent is not required.

**107.14 THIRD PARTY BENEFICIARY CLAUSE.** It is specifically agreed between the parties to the Contract that it is not intended to create anyone as a third party beneficiary or to authorize anyone not a party to the Contract to maintain an action for damages pursuant to the terms or provisions of the Contract.

**107.15 RESPONSIBILITY FOR DAMAGE CLAIMS.** Indemnify and save harmless the Department and the Department's officers and employees from all actions or claims brought because of injuries or damages to persons or property caused by the actions or omissions of the Contractor's employees or agents.

**107.16 OPENING SECTIONS OF PROJECT TO TRAFFIC.** The Engineer may open certain sections of the work before completion or acceptance of the Contract. Opening these sections does not constitute acceptance of the work, or waive any Contract requirement.

Pending completion and acceptance of the roadway, complete all repairs or removals on sections of opened roadway caused by defective materials, work or by causes other than ordinary wear and tear meeting Subsection 107.17 requirements.

If shoulders, drainage structures, or other elements of the work are not completed on schedule, the Engineer may order all or a portion of the project open to traffic. Liability and responsibility for maintaining the work before final acceptance remains in effect. Complete the remaining work with minimum interference to traffic.

**107.17 CONTRACTOR'S RESPONSIBILITY FOR WORK.** Protect the work against loss, injury, or damage caused by the elements, traffic, or any other cause, including, but not limited to, fire, theft, pilferage, vandalism, or third-party negligence until final acceptance. Rebuild, repair, and restore all loss, injury and damages to the work resulting from the above causes before final acceptance at Contractor expense.

Rebuilding, repairing, and restoring damage to the work due to unforeseeable causes beyond the control of and without the fault or negligence of the Contractor (including, but not restricted to: acts of God such as earthquake, flood, tornado, or other cataclysmic phenomenon of nature or acts of the public enemy or of governmental authorities) will be paid for under Subsection 104.03. This does not excuse, or allow compensation or repayment for any act or omission by the Contractor or its subcontractors, either in violation of law, regulation, ordinance, etc., or for any act or occurrence which could have or should have been foreseen.

Expect probable adverse weather and stream flow conditions to occur. The cost of delay, loss, injury, or damage occurring to dikes, cofferdams, caissons, work bridges, haul bridges, or any other construction item or equipment, caused by adverse weather and stream flow conditions is the Contractor's responsibility.

The above requirements do not apply to units or portions of the project accepted under Subsection 105.15.1.

Repair of damage not caused by the Contractor to installed delineators, impact attenuators, median barrier, guardrail, guideposts, light poles, sign supports, and the like, that have been accepted as complete and to any building that has been completed in its entirety, is fully functional, and is open to the public, will be paid for under Subsection 104.03.

Payment for repair of damages resulting from public traffic and use does not entitle the Contractor to:

- A. The release of any part of retained percentages;
- B. Relief from responsibility for defective workmanship or materials;
- C. A waiver of any Contract provision.

Conduct the work to assure maximum convenience and safety to the general public and to the property owners adjacent to the work.

Maintain access for adjacent property owners at all times.

Take precautions to prevent damage to the project during work suspensions. Provide for drainage and erect all necessary temporary structures, signs, or other facilities at Contractor expense.

**107.18 CONTRACTOR'S RESPONSIBILITY FOR UTILITY PROPERTY AND SERVICES.** Arrange to protect railway, telegraph, telephone, and power companies property or other property from damage, loss or inconvenience before starting work. Cooperate with the utility owners in the removal and rearrangement of underground or overhead utility lines or facilities to minimize interruption to service and duplication of work by the utility owners.



Call the Utilities Underground Location Center (1-800-424-5555) or other notification system for the marking and locating of the utilities before excavation. Do not damage underground facilities during excavating and backfilling work.

Obtain and carry comprehensive insurance covering underground work and resulting damage to underground utilities in addition to the insurance required by Subsection 107.13.

Provide and maintain temporary drainage facilities if existing surface drainage, sewers, or underdrains are interrupted at Contractor expense until permanent drainage facilities are completed. Protect and preserve existing tile drains, sewers, or other subsurface drains, conduits, and other underground structures affected by construction that can remain in use without any change.

Promptly notify and cooperate with the utility company if utility services are interrupted due to an accidental break until service has been restored.

Do not begin work around fire hydrants until provisions for continued service have been made and approved by the local fire authority. Provide continuous repair until service is restored if water service is interrupted.

Repairs to damaged utility facilities or structures resulting from construction operations and negligence is at Contractor expense. Be responsible to the utility owners and operators for damage, injury, expense, loss, inconvenience, or delay or for any legal suits, actions, or claims that may result from the work. The Commission may require the Contractor to furnish protective public liability and property damage insurance to each corporation, company, partnership, or individual owning or operating the properties affected.

**107.19 FURNISHING RIGHT-OF-WAY.** The Department will obtain all right-of-way for the project.

Exceptions will be noted in the bid proposal and award of the Contract may not be made until right-of-way is obtained. The submission of a bid is an affirmative statement that the bidder accepts this condition and waives any damage that could be claimed.

Claims for damage or loss of anticipated profits because of this delay will not be considered by the Department. Consideration will be given for an appropriate extension of the contract time if the award is substantially delayed.

**107.20 PERSONAL LIABILITY OF PUBLIC OFFICIALS.** The Department, and its authorized representatives are acting solely as agents and representatives of the State when carrying out or exercising the power or authority granted under the Contract.

There shall not be any liability on them either personally or as officials of the State.

**107.21 NO WAIVER OF LEGAL RIGHTS.** Once the work is complete, the Department will expeditiously make final inspection and notify the Contractor of acceptance. Final acceptance will not prevent the Department from correcting any measurement, estimate, or certificate made before or after contract completion and from recovering from the Contractor, or surety, or both overpayment's sustained for failure to fulfill the obligations under the Contract. A Department waiver of any

breach of any part of the Contract does not constitute a waiver of any other or subsequent breach.

Be liable to the Department for latent defects, fraud, or gross mistakes as may amount to fraud, or with regards to the Department's rights under any warranty or guaranty.

#### **107.22 PROTECTION OF ARCHEOLOGICAL AND HISTORICAL FINDINGS.**

Provide the Project Manager written evidence that no historic or pre-historic sites on or eligible for listing in the National Register of Historic Places are located on property used for construction activities that are outside of the Department obtained right of way, easements, material sites, or other areas designated in the Contract before construction starts. These areas include but are not limited to staging areas, contractor furnished material sites, or other related areas to be used for the work.

Submit the legal descriptions, the acreage (hectares) involved, a description of the work activity, a site plan, and a description of the ground surface of all sites not included in the contract plans. Forward the submittal to the Montana Department of Transportation, Environmental and Hazardous Waste Bureau Archeologist (Phone 444-0455). Within 10 working days, the Department will notify the Contractor if the presence or potential of cultural resources exists in the areas and recommend if a professional cultural resource survey is needed or not needed. If a survey is not recommended, no further cultural resource work is required.

If a survey is recommended, hire a professional cultural resource contractor perform a survey. A directory of cultural resource contractors is available from the Department Archeologist.

If the survey does not identify any historic or pre-historic site within the area of proposed disturbance the Department will issue a notice to proceed with the work. If the cultural resource contractor or the Department identify any historic or pre-historic sites within the proposed area of disturbance, the Department, in concert with SHPO will determine whether the site(s) may be eligible for listing in the National Register of Historic Places.

Choose one of the following options if a site is eligible.

- A. Do not use or disturb the proposed site;
- B. Request the Department to proceed with the steps to comply with 36 CFR 800. Use a professional cultural resource contractor to perform all field work, surveys, etc. required to complete the process identified by the Department. No additional compensation or delay considerations is allowed under these requirements.

Immediately stop work if archeological or historical artifacts are encountered. Immediately notify the Project Manager of the find. The Project Manager will stake the area to remain undisturbed until further notice.

**107.23 DISCOVERY OF UNDERGROUND STORAGE TANKS.** Take the following action if an underground storage tank or tanks are encountered, the existence or location which was previously unknown to the Department or Contractor, on the project within the highway right-of-way, or in any other area of the project, including the Contractor's own work areas :

- A. Immediately stop work in the vicinity and notify the Project Manager of the find.

- B.** Immediately notify the local fire authority and, within 24 hours notify the State authority if there is evidence of a tank leak or pipe leak. The state authority to be contacted is:

Underground Storage Tank Program  
Department of Health and Environmental Sciences  
Solid and Hazardous Waste Bureau  
Cogswell Building, Room B201  
Helena, MT 59620  
(406) 444-5970

- C.** Immediately protect people and property from fire, explosion, vapor, and other potential hazards and, prevent further release of the tank's contents and take all actions requested by the Underground Storage Tank Program personnel.

- D.** Perform the tank closure work as directed by the Project Manager.

- E.** Do not resume work in the immediate vicinity of the tank until approved.

Costs incurred from the discovery of underground storage tanks within the highway-right-of-way will be paid for as extra work under Subsection 104.03. Costs from the discovery of underground storage tanks outside the highway-right-of-way is at the Contractor's expense.

**107.24 DISCOVERY AND REMOVAL OF UNKNOWN HAZARDOUS MATERIALS.**

If the Contractor discovers hazardous material (i.e., asbestos, PCBs, petroleum, PCPs, hazardous waste or radioactive material, etc.), the existence or location which was previously unknown to the Department and the Contractor and not identified in the contract, the Contractor must immediately stop work in that area. The Contractor will immediately notify the Project Manager. Work may continue in unaffected areas believed to be safe.

The Department will equitably compensate the Contractor under Subsection 109.04.3 for costs associated with the delay to work in the affected area.

Once notified of the contaminated site, the Department will determine whether a separate contractor will be used to assess and clean up the contaminated site before permitting the Contractor to resume work in the contaminated area. The separate contractor will obtain all necessary clearances (procedures, permits, etc.) from the regulatory agencies before starting any work. If the Department, after consulting with the Contractor, determines that the Contractor can perform the work it is subject to Subsection 107.26 and will be paid for under Subsection 109.04.3.

If the Contractor does not want to perform the work, it agrees and accepts that it waives any potential claim for itself, its subcontractors, and suppliers for damages for delay from the Department's securing another contractor to perform the clean-up work.

If the area is determined to pose a hazard to the traveling public, close off all access to the area as directed.

**107.25 ACCESS TO CONTRACTORS RECORDS.** Allow access to all records, and the records of all subcontractor's, under Section 18-1-118 MCA, by the Legislative Auditor and Legislative Fiscal Analyst to determine compliance with the terms of the Contract.

**107.26 LIABILITY FOR CERCLA/CECRA CLAIMS.** The Department will indemnify, protect, and hold harmless, the Contractor for any actions which the Department specifically directs or reasonably requires the Contractor to perform only if said action is the subject of litigation or administrative action under CERCLA, 42 U.S.C. §9601, et seq., or CECRA (§75-10-701 et seq., MCA), and it does not fall within the exceptions below.

The Contractor shall indemnify, protect, and hold harmless the Department for any omissions or actions not specifically directed by the Department if said omissions or actions are the subject of litigation or administrative action pursuant to CERCLA or CECRA. Actions or omissions which are chosen either in type, scope, location, amount or method by the Contractor are not "specifically directed or reasonably required" by the Department.

The Contractor shall further indemnify, protect, and hold harmless, the Department for any negligent actions by the Contractor, its subcontractors, their employees or agents, including any actions that may be the subject of litigation or administrative action pursuant to CERCLA or CECRA.

When the Contractor is directed by the Contract to obtain hazardous material liability insurance coverage for a project, that contract requirement controls and has priority over this specification.